



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 3556-99

22 December 1999

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 26 February 1968 for four years at age 19. A waiver of your prior police record was granted prior to your enlistment. There is no evidence in the record that you were promised training in any career field by recruiting officials.

You served without incident until 8 April 1969 when you were convicted by special court-martial of three periods of unauthorized absence (UA) totalling about 184 days, from 25 June to 8 July 1968, 3 September 1968 to 6 February 1969, and 12-27 February 1969; breaking restriction, and escape from lawful custody. You were sentenced to confinement at hard labor for six months, forfeitures of \$45 per month for six months, and a bad conduct discharge. On 10 July 1969 you requested remission of the punitive discharge but did not desire restoration to duty. You stated that you could not adjust to the military and felt that you had a mental problem. The Navy Court of Military Review affirmed the findings and the sentence on 22 August 1969. Thereafter, clemency was denied and the Court of Military Appeals

denied your request for review. You received the bad conduct discharge on 19 January 1970.

The Naval Discharge Review Board denied your requests for upgrade of your discharge on 20 February 1974 and 31 July 1979. Your application for recharacterization of your discharge was previously considered and denied by this Board on 14 March 1975 and 1 June 1984. Requests for reconsideration were also denied on 28 July 1983 and 11 February 1992.

Your case is being reconsidered based upon the Presidential Pardon for the 8 April 1969 special court-martial conviction, a state governor's pardon for two civil convictions, your bachelor of science degree, home mortgage evidence, a training certificate, performance evaluation, and a letter of reference.

The Board noted that the contentions that you came from a deprived family background; suffered from a lack of guidance and counseling in the service; and the Marine Corps failed to honor a recruiter's unwritten promise of specific skill training have all been previously considered. The Board has also considered your post-service achievements such as your college degree, social work and contributions to the Native American community.

The Board noted that although the Presidential Pardon restores any civil rights you were denied by the court-martial conviction, it does not remove the conviction from your military record, change the character of your service or compel this Board to recharacterize your service. The pardon was not issued because you were found innocent but was granted only as a matter of clemency based on your post-service achievements. Your total lost time due to UA and military confinement was 381 days in 24 months of service. As a result, you completed only about 10 months of creditable service. Even if you were promised certain training by the recruiter, and neither the record nor your submissions support this contention, failure to afford you this training did not justify your UA's. You chose to go UA when there were other options you could have taken. The Board concluded that lost time of more than a year does not constitute service under honorable conditions. The Board believed that to recharacterize your service to honorable or under honorable conditions would be grossly unjust and a disservice to those who served honorably and completed their enlistments without any disciplinary actions. The Board concluded the discharge appropriately characterizes your service and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the

Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director